



DECISION OF COMMISSION

In the Matter of:

Don E. Groves
[REDACTED]

Groves Plumbing & Heating
Manassas Park, Virginia

Date of Appeal
to Commission: July 24, 1989
Date of Review: September 1, 1989
Place: RICHMOND, VIRGINIA
Decision No.: 32327-C
Date of Mailing: September 6, 1989
Final Date to File Appeal
with Circuit Court: September 26, 1989

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This case comes before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-8906287), mailed July 14, 1989.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.2-618.1 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On July 24, 1989, the claimant filed a timely appeal from the Decision of Appeals Examiner which disqualified him from receiving benefits, effective December 25, 1988. The basis for that decision was the Appeals Examiner's finding that the claimant left his job voluntarily without good cause.

Prior to filing his claim for benefits, the claimant last worked as the president of Groves Plumbing & Heating Corporation. The claimant was a part-owner and president of this corporation from January 1, 1968, until October 1, 1988.

Effective October 1, 1988, the claimant sold the assets of the corporation's plumbing and heating business, together with the company name, to LCI Associates. The claimant then began seeking other work and subsequently relocated to Avon Park, Florida.

Although the claimant had sold the name and all the assets of the plumbing and heating business to LCI Associates, he maintained the corporation known as Groves Plumbing & Heating Corporation. He obtained permission for that corporation to transact business in the state of Florida and, at the time of the Appeals Examiner's hearing, was involved in a car wash business there.

The claimant felt that he was under extreme nervous strain and stress. This prompted him to sell his business to LCI Associates. The claimant had not been advised by a physician that he needed to get out of the business for health reasons. At the time his employment ended with the sale of the business, he had not obtained a definite offer of employment elsewhere.

OPINION

Section 60.2-618.1 of the Code of Virginia provides for a disqualification if the Commission finds that a claimant left work voluntarily without good cause.

In construing the meaning of the phrase "good cause," the Commission has consistently limited it to those factors or circumstances which are of such a substantial, compelling, and necessitous nature as would leave the claimant no other reasonable alternative other than quitting work. See, Phillips v. Dan River Mills, Inc., Commission Decision 2002-C (June 15, 1955); Lee v. Virginia Employment Commission, et al, 1 Va. App. 82, 335 S.E.2d 104 (1985).

The Commission has consistently held that the sale of one's interest in a business is a voluntary act as part of the free enterprise system. Accordingly, when an individual's unemployment arises from the sale of his interests, his separation from work must be deemed to be a voluntary leaving. See, Decision IS-1618-1603 (October 19, 1956); Hull v. Merrimack Marine, Inc., Decision UI-73-1930 (October 26, 1973), aff'd, Commission Decision 6140-C (November 29, 1973); Compton v. Color Clean Corporation, Commission Decision 18749-C (July 16, 1982).

While its facts are distinguishable from those presently before the Commission, the Compton case illustrates relevant principles that are applicable here. In that case, the Commission stated:

In the present case, the claimant was faced with an untenable situation. The promissory note which he had executed in favor of the third stockholder of the corporation had been called since he did not have the necessary funds to make the interest payments. In addition, the corporation was facing difficult financial problems as the result of a slowing down of business. As a result, the claimant was not receiving any dividends or profits from the corporation as had originally been anticipated. Under these circumstances, the Commission is of the opinion that the claimant had little choice but to exchange his stock in the corporation for the consideration of the noteholder cancelling the note which he had executed. Had he failed to do so, he would have been subject to civil litigation and given the current circumstances of the business, there was no reasonable prospect that he would receive any profits, dividends or potentially even his salary. Furthermore, there was no reasonable opportunity to continue working for this employer after the exchange of stock had taken place.

From the passage quoted above, it is readily apparent how the claimant in the Compton case was faced with compelling and necessitous circumstances which left him no other reasonable alternative other than to sell his interest in the business. However, when the facts of the present case are examined in light of the same principles, the Commission is unable to conclude that good cause has been established.

The claimant's decision to sell his business was prompted by his belief that the nervous strain and stress he was experiencing was detrimental to his health. Unfortunately, the evidence in the record does not support that proposition. The claimant candidly admitted that no physician had advised him to quit his job or sell the business due to health reasons. Furthermore, it appears that at least three other reasonable alternatives were available to the claimant short of selling the business when he did. First, the claimant could have obtained another job or business that would have been more suitable for his particular needs and circumstances. Had he done so, he could have assured himself of a continuous period of employment without hazarding the risks of being unemployed. Second, the claimant could have attempted to

reduce his own activities and responsibilities by assigning them to other subordinates. Such a course of action may have reduced the stress and strain he was experiencing. A final option would have been to negotiate with LCI Associates to retain a position in the business which may have allowed him to continue working without the necessity of being involved in the pressures and responsibilities of day-to-day operations. (Underscoring supplied)

For these reasons, the Commission must conclude that the evidence in the record is insufficient to establish good cause for the claimant's decision to voluntarily leave his job. Accordingly, the disqualification provided in Section 60.2-618.1 of the Code of Virginia must be imposed.

DECISION

The Decision of Appeals Examiner is hereby affirmed. The claimant is disqualified from receiving benefits, effective December 25, 1988, because he left work voluntarily without good cause. This disqualification shall remain in effect for any week benefits are claimed until he performs services for an employer during thirty days, whether or not such days are consecutive, and he subsequently becomes totally or partially separated from such employment.

The case is remanded to the Interstate Deputy with instructions to investigate the claimant's claim for benefits and to determine if he has been paid any sum as benefits to which he was not entitled and is liable to repay the Commission as a result of this decision.

M. Coleman Walsh, Jr.
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Special Examiner